IN THE

Supreme Court of the United States

No. . October Term, 1928.

STANDARD OIL COMPANY AND SINCLAIR REFINING COMPANY,
Petitioners,

v.

CITY OF MARYSVILLE, ET AL.,
Respondents.

MOTION ON BEHALF OF

American Petroleum Institute and The Atlantic Refining Company For Leave to File Suggestion as Amici Curiæ in Support of the Petition for Certiorari.

AND NOW, come the American Petroleum Institute and the Atlantic Refining Company, by James M. Beck, Ira Jewell Williams and Francis Shunk Brown, and move the Court for leave to file the accompanying suggestion in support of the petition for certiorari herein, and for leave to file a brief should the certiorari be granted.

SUGGESTION IN SUPPORT OF PETITION FOR CERTIORARI.

This case is recognized as of unique and overshadowing importance to the general public and to the petroleum industry.

The decree below upheld an ordinance requiring petroleum tanks to be placed under ground. The Master who heard the case found that storage below ground

was more dangerous than storage above ground. The Court below approved his finding. The Court of Appeals, Phillips, *D. J.*, dissenting, reversed that finding.

Those expert in the handling of petroleum products are opposed to placing tanks under ground. A large tank cannot be set in place above ground without serious danger from leaks. When so placed, however, leaks are readily discoverable and repaired. A large tank cannot be placed under ground without the danger of leaks, either in the tank itself or in the underground connections. It is difficult, if not impossible, to ascertain such leaks, and when ascertained the repairs can only be made by pumping out the tank and by resurrecting it. Leaks above ground can be readily ascertained by inspection and readily repaired. Leaks under ground may result in prolonged, gradual, migratory action of the petroleum products, with consequent damage even at somewhat remote points.

Pennsylvania, the pioneer state in petroleum, with the earliest if not the most extended experience, has held void an ordinance prohibiting the storage of gasoline and kerosene in quantities in excess of 400 gallons:

> Manorville Borough v. Flenner, 286 Pa. 103 (1926).

That case came before 14 judges of the Common Pleas, Superior and Supreme Courts of Pennsylvania, and there was no dissent.

Whatever police power is delegated by the legislature to municipalities is subject to the inherent limitation that it must be reasonably exercised.

The reasonableness or unreasonableness of an ordinance must turn upon the decision of questions of fact, and the ordinance itself is far from conclusive of its own reasonableness.

The case at bar is unlike any other case in that the overwhelming weight of the evidence is to the effect

that to proceed in accordance with the ordinance will *increase* the hazard in the storage of petroleum products. Such an ordinance, though it may conform to thoughtless popular prejudice, is contrary to the practice of the industry and the considered judgment of those best qualified to know.

Other ordinances have been and doubtless will be passed based upon such popular prejudice. The case at bar is peculiarly one in which the question should be settled finally for the Federal Courts by a ruling of this Court.

The Atlantic Refining Company is directly affected by a pending case in the Courts of Common Pleas of Lackawanna County, Pa.

The American Petroleum Institute was formed for the following objects: (a) to afford a means of cooperation with the Government in all matters of national concern; (b) to foster foreign and domestic trade in American Petroleum products; and (c) to promote in general the interests of the petroleum industry in all its branches; and (d) to promote the mutual improvement of its members and the study of the arts and sciences connected with the petroleum industry. Its membership includes representatives of practically all of the large producers, refiners and distributors of petroleum products.

The Special Master, the District Judge, and Judge Phillips of the Circuit Court of Appeals, found that the ordinance did not promote public welfare, but on the contrary required a method of storing gasoline and kerosene which increased the hazard of such storage.

Leakage is the arch enemy of the petroleum industry. No method has been devised of accurately measuring the contents of tanks under ground. Such a tank may leak without the knowledge of the most careful attendant. Gasoline will penetrate any soil, and find its way through the earth to sewers, water

mains, cellars and drainage canals, where its vapors may make trouble. This applies especially to tanks of 10,000 gallons or more.

The danger to the public in the handling and making available for quick use of an indispensable instrumentality of modern commerce makes this case of such unique importance that the industry is aroused and urges this Court to grant the certiorari.

Respectfully submitted,

James M. Beck,
Ira Jewell Williams,
Francis Shunk Brown.